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WORLD CONFERENCE AGAINST RACISM,
RACIAL DISCRIMINATION, XENOPHOBIA
AND RELATED INTOLERANCE

Durban, 31 August-7 September 2001
Item 9 of the provisional agenda

CONFERENCE THEMES

Contributions by special rapporteurs

Note by the secretariat

The secretariat has the honour to transmit to the World Conference the contribution of Mr. Miloon Kothari, Special Rapporteur of the Commission on Human Rights on adequate housing as a component of an adequate standard of living.

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1. The Special Rapporteur regards the convening of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance as an opportunity to reaffirm the right to non-discrimination with regard to adequate housing as a component of the right to an adequate standard of living and for States to agree to undertake actions such that the right to adequate housing can be gained and retained in an atmosphere free from racial and other forms of discrimination.

2. Pursuant to Commission on Human Rights resolution 2000/9, the Special Rapporteur has been mandated to address adequate housing as a component of the right to an adequate standard of living as reflected in relevant international instruments; and the right to non-discrimination as reflected in article 14, paragraph 2 (h) of the Convention on the Elimination of All Forms of Discrimination against Women and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination.

3. Furthermore, the Commission on Human Rights, in paragraph 10 (e) of its resolution 2001/28, called upon all States:

> "(W)ithout distinction of any kind, such as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,
>
> (i) To counter social exclusion and marginalization of people who suffer from discrimination on multiple grounds, in particular by ensuring non-discriminatory access to adequate housing for indigenous people and persons belonging to minorities;
>
> (ii) To promote participation in decision-making processes, in particular at the local level, when developing an adequate standard of living and housing".

4. The placing of the housing and discrimination aspects within the context of the indivisibility and universality of human rights is critical. The realization of the right to housing in an environment free from racial discrimination will have a direct bearing on the realization of congruent human rights, including the right to life, the right to an adequate standard of living, the right to freedom of movement and residence, the right to protection against arbitrary or unlawful interference with privacy, family and home, and the right to popular participation.

5. The Special Rapporteur therefore views it essential that the draft declaration and the draft programme of action being considered at this Conference be firmly placed within the human rights framework accorded to the right to housing by relevant articles of the international human rights instruments.

6. In particular, it should be recalled that article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination obliges States "to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... (e) ... (iii) the right to housing".

7. Furthermore, article 14, paragraph 2 of the Convention on the Elimination of All Forms of Discrimination against Women states: "States Parties shall undertake all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right ... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications".

8. Article 16, paragraph 1 of the Convention on the Rights of the Child states: "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation". Article 27, paragraph 3 states: "State Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing". As repeatedly stressed by the Committee on the Rights of the Child, these provisions must be viewed in the light of article 2 of the Convention, whereby the rights set forth in the Convention must be respected and ensured "without discrimination of any kind".[1]

9. The most overarching provision for the right to adequate housing is stipulated in article 11, paragraph 1 of the International Covenant on Economic, Social and Cultural Rights, which states: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent". In its General Comment No. 4 on the right to adequate housing,[2] the Committee on Economic, Social and Cultural Rights reaffirmed the concept of human dignity and the principle of non-discrimination with regard to adequate housing under the International Covenant on Economic, Social and Cultural Rights. In the Committee's view: "The right to adequate housing applies to everyone. ... individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination" (para. 6).

10. The issue of non-discrimination in housing and land rights received universal recognition at the second United Nations Conference on Human Settlements (Habitat II), held at Istanbul, where Governments firmly committed themselves to the principle of non-discrimination in the provision of housing and agreed on actions that should be taken in this regard (see Habitat Agenda, paras. 27, 36 and 40).[3]

11. Five years after Habitat II, in both developing and developed countries, racial discrimination in housing remains a major problem, affecting the right of minorities, migrants, the Roma, refugees and internally displaced persons, the landless and marginal farmers, indigenous and tribal populations, people living with HIV and AIDS, people living under occupation/alien domination, street children, the disabled and the elderly to gain and sustain a secure home and community in which to live in peace and dignity.

12. In the first report submitted to the Commission on Human Rights (E/CN.4/2001/51), the Special Rapporteur referred to the issue of residential segregation and its far-reaching economic, social and psychological consequences, which was highlighted in the statement of the Committee on the Elimination of Racial Discrimination to Habitat II in 1996.[4] The Committee also observed in its General Recommendation XIX, that in many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent, national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.[5]

13. In the same report, the Special Rapporteur further noted, in a growing climate of racial and ethnic divisions across the world, in addition to the provision on the right to housing in article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, the obligation on States contained in article 3 to "particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction". In this context, the Special Rapporteur recommended that the World Conference should urge States to: (a) strengthen their monitoring of the situation of marginalized racial and ethnic groups, particularly with regard to fundamental economic and social indicators, including housing; and (b) enact or strengthen legislative measures prohibiting racial discrimination in all areas of the public and private sectors, including housing and land policies, as well as in the provision of related services.[6]

14. Furthermore, the Special Rapporteur is of the view that discrimination and segregation in housing can be based not only on grounds of race, class or gender, but can also result from poverty and economic marginalization. As the Committee on Economic, Social and Cultural Rights has stated:

> "Non-discrimination and equality are integral elements of the international human rights normative framework, including the International Covenant on Economic, Social and Cultural Rights. Sometimes poverty arises when people have no access to existing resources because of who they are, what they believe or where they live. Discrimination may cause poverty, just as poverty may cause discrimination. Inequality may be entrenched in institutions and deeply rooted in social values that shape relationships within households and communities. Accordingly, the international norms of non-discrimination and equality, which demand that particular attention be given to vulnerable groups and individuals from such groups, have profound implications for anti-poverty strategies."[7]

15. In the same report, the Special Rapporteur pointed out that, owing to globalization policies, there is increased marginalization of the poor as manifested by the growing numbers of people having to cope with land speculation, the commodification of housing, the application of "user fees" for housing resources such as water, sanitation and electricity, and the repeal or amendment of land ceiling and rent control legislation.[8] The Special Rapporteur urges all States to ensure that the formulation and implementation of economic globalization policies, such as those in the areas of trade, investment, finance, structural adjustment and debt, do not create conditions that will lead to increases in the number of people and communities facing discrimination and segregation with regard to housing, land and access to related civic services.

16. The Special Rapporteur welcomes the outcomes of the regional preparatory meetings for the World Conference in which some of these issues were addressed, and hopes that they will receive due attention in the final outcomes of the Conference. In particular, it is important, in addition to the points stressed in paragraphs 13 to 16 above, to reaffirm the obligations of States, in conformity with the applicable international human rights instruments, with regard to taking necessary steps to ensure that:

(a) Legislation, policies and programmes are devised that promote equal access to civic services essential to the realization of the right to housing - including potable water, electricity and sanitation - and to repeal policies and programmes that promote discriminatory access to these civic services;

(b) Access is guaranteed to judicial remedies for violations of the right to housing, such as forced evictions, deliberate denial of civic services, etc., including reparations for damages suffered in accordance with article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination;

(c) National institutions have the legislative and administrative mandate, and the necessary resources, to monitor the effective enjoyment of the right to housing, including receipt of complaints, and capacity and authority to undertake follow-up action;

(d) Affirmative action is undertaken in order to diminish or eliminate conditions which cause or help to perpetuate discrimination in the realization and retention of the right to housing, in accordance with General Comment No. 18 of the Human Rights Committee on non-discrimination;

(e) Women are accorded full and equal rights to own land and other property, and the right to adequate housing, including through the right to inheritance, and that necessary measures are undertaken to support the transformation of customs and traditions that discriminate against women and deny women these rights, in accordance with Commission on Human Rights resolutions 2000/13 and 2001/34;

(f) Special barriers to the enjoyment of the right to adequate housing that are disproportionately faced by ethnic and racial minorities and indigenous peoples living in life- and health-threatening housing conditions are eliminated;

(g) No child shall be subjected to discrimination with regard to his or her right to adequate housing, on the grounds of his or her parents' race, colour, national or ethnic origin, sex, property or other status, and that special protection and assistance are provided to children living in the streets and those temporarily or permanently deprived of a family environment, in accordance with the provisions of article 20 of the Convention on the Rights of the Child;

(h) Sufficient public expenditure is allocated towards realizing the right to housing in an environment free from racial discrimination;

(i) Ways and means are found, which do not involve public expenditure, of abstaining from discriminatory practices that violate the right to housing, such as forced evictions;

(j) Housing loans and finance are available without discrimination;

(k) In accordance with General Recommendation XIX of the Committee on the Elimination of Racial Discrimination, housing, land and planning policies, including the preparation of city and regional master plans, that residential patterns are not allowed to form based on group differences of race, colour, descent, national and ethnic origin, such that residents are stigmatized and suffer a form of discrimination in which racial grounds are mixed with other grounds. Moreover, it is essential that in the formulation and implementation of these plans, the right to participation, including through participatory budgetary processes, be ensured on a basis of non-discrimination and equality.

17. The Special Rapporteur is of the view that much more research is necessary on the extent to which discrimination in housing and land contributes to the creation of discrimination and segregation in regard to particular people and communities. The specific short- and long-term impact of residential segregation and of globalization policies needs further study. The World Conference should call attention to the need to define such as a research agenda on these issues and recommend that relevant United Nations bodies, such as the Office of the United Nations High Commissioner for Human Rights, the United Nations Centre for Human Settlements (Habitat), the United Nations Research Institute for Social Development and the Special Rapporteur undertake such research.

18. In conclusion, the Special Rapporteur cannot stress enough the centrality of the right to adequate housing in addressing problems of racial discrimination. In the current state of institutionalized discrimination that is found in the patterns of violations that the right to adequate housing is subject to, it is critical that the World Conference recommend radical solutions that are imbued with the legal, moral and ethical basis of the right to housing found in the international human rights instruments and in the interpretations given to these wide-ranging provisions by the United Nations treaty bodies in their General Comments and General Recommendations.

Notes

[1] As most recently reiterated in the statement of the Committee on the Rights of the Child to the General Assembly at its special session for an overall review and appraisal of the outcome of the United Nations Conference on Human Settlements (Habitat II), adopted at the twenty-seventh session of the Committee on 27 May 2001.

[2] Contained in document HRI/GEN/1/Rev.4, section I.

[3] Paragraph 27 of the Habitat Agenda (A/CONF.147/18) states: "Equitable human settlements are those in which all people, without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, have equal access to housing, infrastructure, health services, adequate food and water,

education and open spaces. In addition, such human settlements provide equal opportunity for a productive and freely chosen livelihood; equal access to economic resources, including the right to inheritance, the ownership of land and other property, credit, natural resources and appropriate technologies; equal opportunity for personal, spiritual, religious, cultural and social development; equal opportunity for participation in public decision-making; equal rights and obligations with regard to the conservation and use of natural and cultural resources; and equal access to mechanisms to ensure that rights are not violated. The empowerment of women and their full participation on the basis of equality in all spheres of society, whether rural or urban, are fundamental to sustainable human settlements development." Paragraph 36 states that: "Human health and quality of life are at the centre of the effort to develop sustainable human settlements. We therefore commit ourselves to promoting and attaining the goals of universal and equal access to quality education, the highest attainable standard of physical, mental and environmental health, and the equal access of all to primary health care, making particular efforts to rectify inequalities relating to social and economic conditions, including housing, without distinction as to race, national origin, gender, age, or disability, respecting and promoting our common and particular cultures." Paragraph 40 states that: "We further commit ourselves to the objectives of: ... (j) Eradicating and ensuring legal protection from discrimination in access to shelter and basic services, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; similar protection should be ensured against discrimination on the grounds of disability or age."

[4] A/51/18, annex IV, para. 4.

[5] A/50/18, annex VII, para. 3.

[6] E/CN.4/2001/51, para. 38.

[7] E/C.12/2001/10, para. 11.

[8] Ibid., paras. 57 to 61.